

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

NETLIST, INC.,)	
)	
Plaintiff,)	
)	Case No. 2:22-cv-293-JRG
vs.)	
)	JURY TRIAL DEMANDED
SAMSUNG ELECTRONICS CO., LTD;)	(Lead Case)
SAMSUNG ELECTRONICS AMERICA,)	
INC.; SAMSUNG SEMICONDUCTOR)	<div style="background-color: black; width: 150px; height: 1.2em;"></div>
INC.,)	
)	
Defendants.)	

NETLIST, INC.,)	
)	
Plaintiff,)	
)	Case No. 2:22-cv-294-JRG
vs.)	
)	JURY TRIAL DEMANDED
MICRON TECHNOLOGY, INC.;)	
MICRON SEMICONDUCTOR)	
PRODUCTS, INC.; MICRON)	
TECHNOLOGY TEXAS LLC,)	
)	
Defendants.)	

**DECLARATION OF STEPHEN M. PAYNE IN SUPPORT OF NETLIST,
INC.'S OPPOSITION TO MICRON'S MOTION FOR SUMMARY JUDGMENT
OF NO PRE-SUIT DAMAGES (DKT. 367)**

I, Stephen M. Payne, declare as follows:

1. I am an attorney at the law firm of Irell & Manella LLP, counsel of record for Plaintiff Netlist, Inc. (“Netlist”) in the above-captioned action. I am a member in good standing of the State Bar of California and have been admitted to practice *pro hac vice* before this Court in this action. I provide this declaration in support of Netlist, Inc.’s Opposition to Micron’s Motion for Summary Judgment of No Pre-Suit Damages (Dkt. 367). I have personal knowledge of the facts stated herein, and could and would testify completely thereto if called as a witness in this matter.

2. Attached as **Exhibit 1** is a true and correct excerpted copy of a 2011 Netlist presentation titled “HyperCloud and N3DS,” produced beginning at Bates NETLIST_SAMSUNG_EDTX0005760.

3. Attached as **Exhibit 2** is a true and correct copy of a July 31, 2013 Micron press release titled “Micron and Elpida Announce Closing of Sponsor Agreement Transactions.”

4. Attached as **Exhibit 3** is a true and correct excerpted copy of Exhibit A to Dr. William Mangione-Smith’s opening expert report in this action.

5. Attached as **Exhibit 4** is a true and correct copy of the December 20, 2023 Declaration of Gail Sasaki and attachments thereto.

6. Attached as **Exhibit 5** is a true and correct copy of a February 2015 Netlist presentation, produced beginning at Bates NL-MIC-203_00042010.

7. Attached as **Exhibit 6** is a true and correct copy of email correspondence from Rex Sherry to C.K. Hong dated April 21, 2015, produced beginning at Bates NL-MIC-203_00042083.

8. Attached as **Exhibit 7** is a true and correct copy of an April 2015 presentation titled “Micron / Netlist Partnership Opportunity,” produced beginning at Bates NL-MIC-203_00042085.

9. Attached as **Exhibit 8** is a true and correct copy of email correspondence from Rex Sherry dated April 15, 2015, produced beginning at Bates NL-MIC-203_00042009.

10. Attached as **Exhibit 9** is a true and correct copy of the November 27, 2023 Declaration of Noel Whitley.

11. Attached as **Exhibit 10** is a true and correct excerpted copy of the transcript of the September 20, 2023 deposition of C.K. “Chuck” Hong, taken in Civil Case No. 22-CV-203-JRG.

12. Attached as **Exhibit 11** is a true and correct excerpted copy of the transcript of the February 3, 2017 deposition of Noel Whitley, taken in ITC Inv. No. 336-TA-1023.

13. Attached as **Exhibit 12** is a true and correct excerpted copy of the transcript of the September 1, 2023 deposition of Scott Milton, taken in Civil Case No. 22-CV-203-JRG.

14. Attached as **Exhibit 13** is a true and correct excerpted copy of the transcript of the November 20, 2023 deposition of Scott Milton, taken in this action.

15. Attached as **Exhibit 14** is a true and correct copy of email correspondence dated August 10, 2017, produced beginning at Bates MICNL203-00082052.

16. Attached as **Exhibit 15** is a true and correct copy of a letter dated April 28, 2021 from Marc Frechette to Sanjay Mehrotra, produced beginning at Bates NL-MIC-203_00030433.

17. Attached as **Exhibit 16** is a true and correct excerpted copy of Micron’s Fifth Supplemental Responses and Objections to Netlist’s First Set of Amended Interrogatories, dated January 15, 2024.

18. Attached as **Exhibit 17** is a true and correct copy of U.S. Patent No. 11,093,417.

19. Attached as **Exhibit 18** is a true and correct copy of a letter dated April 1, 2022 from Jayson Sohi to Rebecca Carrizosa, produced beginning at Bates NETLIST_SAMSUNG_EDTX00042440.

20. Attached as **Exhibit 19** is a true and correct copy of Exhibit A to Netlist’s April 1, 2022 Correspondence to Micron, produced beginning at Bates NETLIST_SAMSUNG_EDTX00042445.

21. Attached as **Exhibit 20** is a true and correct copy of a document produced in this action beginning at Bates SAM-NET00074543.

22. Attached as **Exhibit 21** is a true and correct copy of a letter dated April 1, 2010 from Mario Martinez to John Kelly, produced at Bates NETLIST_SAMSUNG_EDTX00021960.

23. Attached as **Exhibit 22** is a true and correct excerpted copy of a collection of License Assurance/Disclosure Form, produced beginning at Bates NETLIST_SAMSUNG_EDTX00021928.

24. Attached as **Exhibit 23** is a true and correct excerpted copy of a Notice of Refusal to Offer Licenses on RAND Terms Form, produced beginning at Bates NETLIST_SAMSUNG_EDTX00022048.

25. Attached as **Exhibit 24** is a true and correct excerpted copy of a letter dated September 7, 2011 from DLA Piper LLP to John Kelly and attachments thereto, produced beginning at Bates NETLIST_SAMSUNG_EDTX00021961.

26. Attached as **Exhibit 25** is a true and correct copy of a letter dated January 8, 2008 from Jayesh Bhakta to Mian Quddus, produced at Bates NETLIST_SAMSUNG_EDTX00021927.

27. Attached as **Exhibit 26** is a true and correct copy of a collection of License Assurance/Disclosure Forms produced beginning at NETLIST_SAMSUNG_EDTX00021994.

28. Attached as **Exhibit 27** is a true and correct excerpted copy of Netlist's Second Supplemental Responses and Objections to Micron's First Set of Interrogatories, dated November 19, 2023.

29. Attached as **Exhibit 28** is a true and correct excerpted copy of Netlist's Responses and Objections to Micron's Second Set of Interrogatories, dated November 13, 2023.

30. Attached as **Exhibit 29** is a true and correct excerpted copy of the transcript of the December 20, 2023 Pretrial Conference for Civil Case No. 2:22-CV-203-JRG.

31. Attached as **Exhibit 30** is a true and correct excerpted copy of the transcript of the

January 12, 2024 Pretrial Conference for Civil Case No. 2:22-CV-203-JRG.

32. Attached as **Exhibit 31** is a true and correct copy of D.I. 429 in Civil Case No. 2:22-CV-203-JRG, filed on January 11, 2024.

33. Attached as **Exhibit 32** is a true and correct copy of the JEDEC Manual of Organization and Procedure, JM21V.

34. Attached as **Exhibit 33** is a true and correct copy of an email chain between Netlist and Micron dated February 20, 2015 to February 25, 2015.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 30, 2024.

By /s/ Stephen M. Payne
Stephen M. Payne